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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1295 (XLIV).

[27 January 1997]

1. The Lawyers Committee for Human Rights wishes to raise its concerns about denials of due process and the rule of law in China. These concerns are fully set out in a 1996 Lawyers Committee report entitled Opening to Reform: An Analysis of China's revised Criminal Procedure Law, which examines important revisions to the Criminal Procedure Law (CPL) which took effect on 1 January 1997.

2. The new law on criminal procedure offers some positive opportunities, at the same time we believe it underscores some fundamental problems with the Chinese legal system. An important improvement in the new law is the greater concern for the protection of defendants' rights. The law also sets a stricter standard against which the Government's actions, including those that contravene the revised CPL, can be judged.

3. These reforms must also be viewed in the context of a legal system which, in many fundamental ways, does not comply with international standards contained in the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Recommendations

4. The Lawyers Committee believes there are several areas where it is necessary and feasible for China to enact additional reforms:

(i) All forms of detention and arrest ("coercive measures" under the CPL) should be subject to prompt judicial review. Police discretion to hold suspected criminals without prompt judicial review should be eliminated.

(ii) Anyone subject to any form of detention or arrest should have the right to bring a habeas corpus proceeding to challenge that detention or arrest.

(iii) A genuine system of bail should be established. Subject to reasonable exceptions, anyone awaiting trial should be entitled to release on bail.

(iv) Detainees' right to communicate with their families should be fully respected. Police discretion to dispense with notification of detainees' families should be eliminated.

(v) The grounds for non-custodial forms of detention under the CPL ("supervised residence" and "taking a guarantee and awaiting trial") should be clearly specified to avoid their indiscriminate and arbitrary use.

(vi) All suspects should be given notice of their right to counsel immediately upon detention or arrest. Police discretion to restrict suspects' access to counsel on grounds of "State secrets" should be eliminated. Current proposals simply to redenominate such crimes as "crimes endangering State security" will not suffice to bring China into compliance with international law, particularly if the grounds for such crimes are expanded to incorporate a range of legitimate contacts between Chinese and non-Chinese citizens.

(vii) All suspects and defendants without the means to pay for a lawyer should be entitled to free legal assistance. Inability to afford a lawyer should give rise to mandatory rather than merely optional appointment of counsel.

(viii) The confidentiality of lawyer-client communications should be strictly respected. Police discretion to be present at lawyer-client meetings should be eliminated.

(ix) All determinations of criminal responsibility should be made after a public hearing before an independent tribunal. All sources of interference with judicial independence should be eliminated.

(x) Prosecutorial discretion to make de facto determinations of guilty through decisions "not to prosecute" should be sharply limited and subjected to judicial oversight. Administrative sanctions such as "reeducation through labour" which circumvent the formal criminal justice system should be eliminated. The recent revision of the Criminal Procedure Law eliminated one major method of non-judicial determination of guilt (so-called "exempt from prosecution"). According to the same logic and principles of international law, the Government of the People's Republic of China should now eliminate "reeducation through labour".

(xi) The grounds for closing trials to the public should be clearly specified and conform to the requirements of international law.

(xii) All suspects and defendants should be presumed innocent until proven guilty. Any invidious distinction between defendants found not guilty "on the basis of the law" and those found not guilty "due to insufficient evidence" should be eliminated.

(xiii) All defendants should be given adequate time to prepare their defence at trial. Appointed counsel should be made available at all stages of the criminal process rather than shortly prior to trial.

(xiv) Statements gathered through torture should be strictly inadmissible as evidence. At present, Chinese law forbids the use of torture and provides sanctions against torturers, but it contains no procedure mandating the exclusion of evidence gathered through such illegal and inhumane methods.

(xv) Defendants should have the opportunity to cross-examine adverse witnesses and the right to call witnesses under the same conditions as the State. The practice of permitting the use of transcripts rather than the live testimony of witnesses should be discontinued.

(xvi) Defendants' right to appeal should be strictly safeguarded. Loopholes in the CPL which permit courts to impose heavier penalties on appeal should be eliminated. The practice of lower courts' seeking instructions from higher courts prior to rendering their verdicts should be ended.

(xvii) Remedies for violations of suspects' and defendants' rights should be strengthened. Official discretion to refuse to investigate and remedy such violations should be sharply curtailed.

(xviii) The Government of the People's Republic of China should eliminate the provisions of the Chinese law which sanction the non-violent expression of political opinion as "counter-revolutionary crimes".

5. The Lawyers Committee urges the Commission on Human Rights to closely monitor and evaluate the Chinese criminal justice system. Such scrutiny by the international community will help promote China's compliance with international norms.

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